

CRM-M-29611-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29611-2021
Reserved on: 05-04--2022
Pronounced on: 08-04-2022

Beant Singh
...Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.K. Chawla, Advocate for the petitioner.
Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
68	27.06.2001	Division No. 2, Ludhiana, District Ludhiana	223 IPC

1. Challenging the order of proclamation on being declared a proclaimed offender, the petitioner has come up before this court under section 482 of Code of Criminal Procedure, 1973 (Cr.P.C).
2. The gist of the facts relevant for adjudication of the present case is that on 25.06.2001, one Vijay Sehgal, who was a prisoner under NDPS Act was taken to Civil Hospital Ludhiana for medical purposes. As per the prosecution, 5 police officials including the petitioner were assigned with him to ensure that he does not abscond from the hospital. Vijay Sehgal was admitted in the hospital on 25.06.2001 at 10:00 a.m. However, he went missing from the prisoner ward of the Civil Hospital. The duty guard did not inform about Vijay Sehgal’s absence in the ward. After that, search was conducted to nab the fugitive and FIR captioned above under Sections 223, 224 IPC was registered.
3. Subsequently, the prosecution was launched against 5 police officials, namely, HC Beant Singh, C. Nirmal Singh, C. Bhag Singh, SPO Bagga Singh and SPO Santokh Kumar. After that, the charges were framed under Section 223 IPC against all the

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accused persons by the Judicial Magistrate Ist Class, Ludhiana. However, during the trial Beant Singh (A-1) did not appear before the trial Court and he was declared a proclaimed offender. The other two accused Nirmal Singh (A-2) and Bhag Singh (A-3) expired and proceedings against them were abetted. Vide judgment dated 04.09.2012, learned Judicial Magistrate Ist Class, Ludhiana convicted Bagga Singh (A-4) and Santokh Kumar (A-5) under Section 223 IPC. Both the convicts Santokh Kumar (A-5) and Bagga Singh (A-4) filed separate appeals before the Sessions Court against their conviction, which were listed as Criminal Appeal Nos. 61 and 66 dated 07.09.2012 respectively. Vide separate judgments dated 29.01.2014, learned Additional Sessions Judge, Ludhiana acquitted both the appellants by holding that there was no documentary evidence and that Vijay Sehgal's custody was assigned to any of these police officials and thus acquitted them and set aside their conviction.

4. Thus, out of 5 police officials, who were charged under Section 223 IPC, Nirmal Singh (A-2) and Bhag Singh (A-3) died during the pendency of the trial and Bagga Singh (A-4) and Santokh Kumar (A-5) were although convicted by the trial Court and the appeal against their conviction were allowed by the Sessions Court and they were acquitted. Thus, only petitioner Beant Singh (A-1) remained without prosecution, however, charges were also framed against him on 01.12.2006 under Section 223 IPC as mentioned in paragraph 3 of order dated 04.09.2012 passed by the trial Court.

5. Apart from the present petition, the petitioner also filed a petition under Section 482 Cr.P.C bearing CRM-M No. 40512 of 2021 seeking quashing of FIR. Vide order dated 01.10.2021, a Co-ordinate Bench of this Court granted protection to the petitioner from arrest. As per status report dated 08.11.2021 filed by Assistant Commissioner of Police, (Central) Ludhiana in CRM-M-40512-2021, it is mentioned that the petitioner had joined the investigation in the above captioned case on 06.10.2021.

6. The petitioner filed another petition under Section 438 Cr.P.C bearing CRM-M-27840-2021 for grant of bail.

7. The accused could not be served through the ordinary process, including summons, bailable warrants, and even non-bailable warrants. The concerned court finally proceeded against the petitioner under section 82 of Cr.P.C and declared the petitioner a proclaimed offender vide order dated 23-02-2012 passed by Ld. JMIC, Ludhiana. The copy of the order is annexed as Annexure P-2.

8. The explanation that the petitioner has offered is mentioned in paragraph 11 of the petition.

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9. Ld. counsel appearing for the State has strenuously opposed this petition, and stated that the petitioner being a police official evaded arrest and avoided service.

10. The stand taken by the petitioner is not at all justifiable to seek quashing of the proclamation order and subsequent proceedings. The stand taken by the accused qua absence of knowledge needs evidence with an opportunity to the State to test the credibility of such evidence. Thus, the petitioner fails to make out a case for setting aside the proclamation order. Be that as it may, the petitioner is now aged 72 years. Out of the five accused, two died during the pendency of trial, and two were acquitted by the Sessions Court by accepting their appeals against conviction.

11. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, which establishes the bonafide at this stage. Without adjudicating the explanation offered and stand taken by the petitioner, this court, in the exercise of its inherent powers under section 482 Cr.P.C, deems it appropriate to grant the following limited relief to the petitioner, subject to the compliance of the conditions mentioned in this order.

12. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

13. The possibility of the accused henceforth not attending the trial, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

14. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and also for the reasons mentioned above, the ends of justice would meet with the following order.

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15. Provided the petitioner has not already surrendered and furnished bonds in the FIR captioned above, he shall surrender before the concerned court on or before April 30, 2022. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail bonds to its satisfaction and imposing additional conditions, as it may deem appropriate in the background of the accused's conduct.

16. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

17. **There shall be a stay of the petitioner's arrest in the case mentioned above up to April 30, 2022;** however, if the petitioner fails to appear within the time stipulated above, then stay on arrest shall stand vacated without any further reference to this court. It is clarified that if the petitioner appears before the concerned court, then all warrants issued by the concerned court against the petitioner, in the matter mentioned above shall stand recalled and canceled.

18. **On or before April 30, 2022,** the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till the completion of the trial or closure of case, whatever is earlier.

19. **Within ten days from today,** the petitioner shall deposit a sum of rupees ten thousand in 'High Court Lawyers Welfare Fund,' Account number 65018692589, SB, IFCI code SBIN0050306, Branch Code 50306, Branch Address State Bank of India, High Court Branch, Sector 1, Chandigarh. After depositing, the petitioner shall file the proof of deposit, before the concerned court and send its copy alongwith a copy of this order to the Secretary, Punjab & Haryana High Court Bar Association, either in physical or electronic mode. The petitioner need not deposit this compensation amount in all petitions filed by him against the above captioned FIR, but just once.

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20. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

22. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition partly allowed to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

08.04.2022
 jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: NO.